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Commissioner, District 5

Katherine Miller
County Manager

DATE: October 10, 2017

TO: Board of County Commissioners

FROM: Mathew Martinez, Development Review Specialist *MM*

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director *PEG*
Vicki Lucero, Building and Development Services Manager *VL*

FILE REF.: CASE # MIS 17-5222 Jerry West Reconsideration of a Condition

ISSUE:

Jerry West, Applicant, Sommer, Karnes & Associates, LLP, Agent, request the reconsideration of a condition imposed by the Board of County Commissioners on a lot size variance for Jerry West. The variance allowed the division of 10.9 acres into two lots and was conditioned that no additional dwellings (beyond what was existing) would be allowed on the property. The Applicant is requesting an amendment to the condition imposed by the BCC to allow 4 dwelling units on 5.963 acre lot. The property is located within the San Marcos Community Overlay District at 2 Loma Oriente Road within, Section 26, Township 15 North, Range 8 East, and (Commission District 5). SDA-2).

Vicinity Map:



Site Location

SUMMARY:

The Applicant is the owner of the property as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on August 12, 2011, as Instrument number 1642514. Karl H. Sommer of Sommer, Karnes and Associates, LLP is authorized by the property owner to pursue the request for an amendment to a condition to allow 4 dwelling units on 5.963 acre lot, as evidenced by a copy of the written authorization contained in the record.

On June 13, 2006, the Board of County Commissioners (BCC) approved a request for a lot split to create a division of 10.9 acres into two lots. The BCC imposed a condition of approval on the property that no additional dwellings will be allowed on the property. There were 2 dwelling units on the property at that time.

On April 27, 2017, the Applicant presented a variance to the Hearing Officer for Public Hearing. The Applicant requested a variance of Ordinance No. 2016-9, the Sustainable Land Development Code, Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential (SMCD RUR-R) zoning district. The Applicant requested a variance to exceed the density requirement of one dwelling unit per ten acres by allowing 4 dwelling units on a 5.963 acre lot. The Applicant has submitted documentation which demonstrates that 2 dwellings existed prior to 1981 and therefore are consider legal non-conforming. These 2 dwellings were in place in 2006 when the applicant went to the board. The Applicant was unable to provide documentation for the remaining other two dwelling units which were converted in to residences after 2006. The Hearing Officer having reviewed the application, staff reports, and having conducted a public hearing on the requests, found that the application is not well-taken and recommended that it should be denied, as memorialized in her findings of fact and conclusions of law in a written order. (Exhibit 9)

On June 15, 2017, the Planning Commission approved the requested variance by a 5-2 vote. (June 15, 2017, Minutes, Exhibit 7)

The Applicant's Agent states, "At some point, existing structures on the property were converted into dwelling units resulting in a total of four dwelling units on the property. In 2017, the Planning Commission approved the Applicant's request for a variance to allow for the four dwelling units on the property to remain (Case # V17-5020). Subsequently, Land Use staff recognized the condition that was previously imposed by the BCC that limited the number of dwelling units, and concluded that since the Condition was imposed by the BCC only the BCC can act to alter or remove the condition."

The Applicant's Agent requests that the BCC remove the Condition to allow the four dwelling units on the property to remain in place, as intended by the Planning Commission.

Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on